Supreme Court, U.S.
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NO. 94-750

In The
Supreme Court of The United States
October Term 1994

QUANTUM CHEMICAL CORPORATION and QUANTUM EMPLOYEE STOCK OWNERSHIP PLAN FOR HOURLY EMPLOYEES,
Petitioners,

v.

RUSSELL WULF, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

The Plan provided in Article 7 for distribution upon "termination of employment", which was not a defined term under the Plan. "Employee" was a defined term under Section 1.14 and Section 1.15 of the Plan, and denoted a person employed by Quantum.

Article 8 of the Plan, headed "Administration of Plan", contained eleven subparts, running from Section 8.01 through Section 8.11, with different sections covering the appointment, duties, action, and conduct of a committee. Section 8.07, headed "Establishment of Rules", was the only subsection expressing allowance of any discretionary power.

Article 12 of the plan, the last section, was headed "Construction", and provided that the plan was to be

construed under ERISA and the laws of the state of New York, and that the masculine included the feminine where appropriate.

Quantum had given the Plan participants, prior to the sale, written descriptions of the Plan indicating that distributions were payable upon termination of employment with Quantum. The evidence below was contradictory as to whether a Quantum official did or did not tell employees orally that a distribution would be determined and paid immediately after the sale - with Plaintiffs contending that he did - but there was no evidence that Quantum informed them that a distribution would not be made or that other plans were under consideration.

The Court of Appeals expressly noted that no particular magic language was necessary to create discretion in administering a plan, and went on to hold that:

> ...each plan must be read in its entirety and language claimed to create the required degree of discretion must be examined in context. Bearing in mind that a grant of discretion is not "an all-or-nothing proposition", we conclude that §8.07 is properly construed to mean that conclusiveness of the committee's determination is limited to disputes over the meaning and application of any rules it might establish pursuant to the first sentences of that section. Section 8.07 clearly deals with rules for administration of the Plan, not with interpretation of the language of the Plan.
>
> -Pet. App. 9a

The Court of Appeals went on to interpret the Plan, reviewing the Plan language, the Plan's purposes, and the Company's written statements concerning the Plan, as well as prior tax and ERISA cases. The Court then determined that there had been a termination of employment under the Plan. It did not use the term "legally correct" (Pet. p. 5) in its decision.

ARGUMENT

I. Petitioners' First "Question Presented" Presents No Issue Warranting Review.

Petitioners' first "Question Presented" is:

> Should this Court intervene to resolve a conflict among the Circuits concerning whether a retirement plan invokes a deferential standard of review if it grants fiduciaries such authority as "conclusive" decision-making power "as to any disputed question"?
>
> -Pet. p. (i)

This Court said in Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989):

> ...we hold that a denial of benefits challenged under §1132 (a) (1) (B) is to be reviewed under a de novo standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.
>
> -489 U.S. 101 at 115

Petitioners present their question as involving a plan granting power "as to any conclusive question" without noting that the language they quote was within, and confined to, a subsection headed "Establishment of Rules". The language did not purport to confer discretion to "determine eligibility for benefits" or "to construe the terms of the plan".

> Petitioners urge the Court to grant certiorari
>
> to revisit Bruch and to purge the contra proferentem doctrine and other artificial presumptions established to frustrate settlor intent.
>
> -Pet. p. 15

With respect, this would not be appropriate. The Court of Appeals did not even mention the contra proferentem doctrine, or apply anything else that could be characterized as an artificial presumption.

Petitioners express approval of a 1991 Bruch decision and a 1992 Bruch decision by the Sixth Circuit

(Pet. p. 10, n. 7), and approval and disapproval of a number of Bruch decisions by other circuits. The only conclusion that is apparent from the whole array, however, is that Petitioners approve of cases where a deferential standard is applied and disapprove of those where a de novo standard is applied. Nothing approaching a split between circuits, or even "inconsistent internal precedent" (Pet. p. 10), is demonstrated.

II. Petitioners' Second "Question Presented" Presents No Issue Warranting Review.

Petitioners' second "Question Presented" is:

> Should a court disregard relevant Internal Revenue Service positions when it reviews an interpretation of a retirement plan intended to qualify for tax-favored treatment under the Internal Revenue Code?
>
> -Pet p. (i)

Petitioners bias the question presented to this Court by asking whether a court should "disregard" "relevant"

information - in particular "relevant Internal Revenue Service positions". Obviously a court should not disregard anything relevant, but the court below did not come close to doing so - it simply refused to give controlling weight to something insignificant.

The IRS position that Petitioner apparently refers to is that taken in Private Letter Ruling No. 8614060 (June 13, 1986) (Pet. p. 19, n. 7). The private ruling - which, under 26 U.S.C. §6110 (j) (3), may not "be used or cited as precedent" - suggested that a distribution to same-desk employees might affect plan qualification under §401. A 1990 memorandum, however, clarified the confusion caused by the 1986 letter ruling. The memo, G.C. Memorandum 39824 (1990), said:

> the term "severance from employment", as used in Rev. Rul. 56-693, 1956-2 C.B.282, for purposes of determining whether a pension plan qualified under section 401(a) may make distributions, does not have the same meaning as"separation from the

service", as used in section 402(e)(4)(A)(iii) for purpose of determining whether a distribution is a "lump sum distribution". A determination as to whether a severance from employment has occurred should be made on the basis of whether or not the employee continues to be employed by the employer maintaining the plan (determined using the criteria described below) rather than on the basis of whether the employee continues to work on the same job for a different employer as a result of liquidation, merger, or consolidation, etc.

....

...[w]hen the employment relationship between an employee and the employer maintaining a pension plan is severed before the employee retires, a distribution of benefits to the employee from that pension plan after severance of the employment relationship with that employer is not inconsistent with the concept of a pension plan that meets all of the requirements of section 401(a).

-I.R.S. General Counsel Memorandum 39824 (1990)

There is not the slightest evidence that the tax issue reflected above had any effect on the thinking or the

drafting by the Company in 1988, or the Plan's thinking early in 1989 when it did not make a distribution or late in 1989 when it did make a distribution. Nor is there anything to indicate what effect it might logically have had. The Court of Appeals was correct in determining - not that IRS positions are irrelevant, which it did not say - but that the historical position argued by Petitioners was not material.

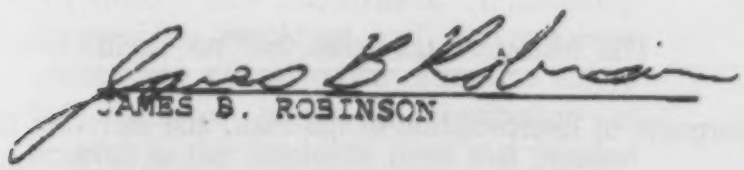
The historical tax issue had no significance for purposes of interpretation of the Plan, and therefore there was no ground for the court to give it the controlling significance in Petitioners' favor that Petitioners now seek. Certainly it provides no ground for review by this Court.

CONCLUSION

For the foregoing reasons, Respondents respectfully urge that the Petition be denied.

Dated: November 22, 1994

Respectfully submitted,



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